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EXAMINER

LUONG, VINH

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,154	<b>Applicant(s)</b> JOHANSSON, MATTIAS	
	<b>Examiner</b> Vinh T. Luong	<b>Art Unit</b> 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5 and 12-25 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 and 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1. Applicant's election of the species of FIGS. 1-3 in the reply filed on March 12, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse. MPEP § 818.03(a).

2. Claims 2-5 and 23-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 12, 2008.

3. The preliminary amendment filed on July 24, 2006 has been entered.

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because of the implied phrases, such as, "[t]he disclosure relates to" and "[a]ccording to the invention and the legal phraseology "means." Correction is required. See MPEP § 608.01(b).

6. The drawings were received on July 24, 2006. These drawings are unacceptable by the Examiner due to the objection below.

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features, such as, e.g., the

normal and safety positions in Claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

FIG. 3 shows the position *ahead* of the normal position as described in the Brief Description of the Accompanying Drawings. As noted, 37 CFR 1.84(h)(4) states: “a moved position may be shown by a broken line superimposed upon a suitable view if this can be done without crowding; otherwise, a separate view must be used for this purpose.”

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 12-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term, such as, “movable” in Claim 12 is vague and indefinite in the sense that things which may be done are not required to be done. For example, the safety device is movable, but is not required structurally to be moved between the normal and safety positions. See “discardable” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986), “crimpable” in *Application of Collier*, 158 USPQ 266 (CCPA 1968), “removable” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and “comparable” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

It is unclear the claimed positions, such as, the normal and safety positions in Claim 12 refer to which figures. Applicant is respectfully urged to identify each claimed position with reference to the drawings.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 12-14, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller et al. (US 2002/0007693 A1 cited by Applicant).

Regarding Claim 12, Mueller teaches a pedal assembly (1) for a vehicle to control a vehicular function, said assembly comprising:

a bracket (5) for attachment to the vehicle,

a shaft (6) coupled to said bracket (5),  
a pedal arm (2) pivotally supported about said shaft (6) in said bracket (5) for moving between rest and applied positions,  
an operating device (7) secured to said pedal arm (2) a distance from said shaft (6) for activation of the vehicular function during movement of said pedal arm (2) between the rest and applied positions, and

a safety device (1, *id.* paragraph [0052]) coupling said shaft (6) to said bracket (5) and *movable* within said bracket (5) between a normal position (FIGS. 1 and 3, *id.* paragraphs [0030] and [0032]) retaining said shaft (6) in a first location relative to said bracket (5) and a safety position (FIGS. 4 and 5) displacing said shaft (6) to a second location relative to said bracket (5) different from said first location with said pedal arm (2) remaining pivotally supported about said shaft (6) for maintaining movement of said pedal arm (2) between the rest and applied positions and for at least partially maintaining functionality of said operating device (7) when said safety device (1) is in said safety position. *Ibid.* Claims 1-16.

Regarding Claim 13, said pedal arm (2) includes an upper region mounted to said shaft (6) and a lower region having a footplate (4) with said footplate (4) moving toward said bracket (5) when said safety device (1) moves from said normal position to said safety position.

Regarding Claim 14, a locking device (11) movably disposed relative to said bracket (5) for securing said safety device (1) in said normal position and for permitting said safety device (1) to move into said safety position.

12. Claims 12 and 15-20, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Mizuma (US 2003/0019319 A1 cited by Applicant).

Regarding Claim 12, Mizuma teaches a pedal assembly (1) for a vehicle to control a vehicular function, said assembly comprising:

- a bracket (2) for attachment to the vehicle,
- a shaft (6) coupled to said bracket (2),
- a pedal arm (8) pivotally supported about said shaft (6) in said bracket (2) for moving between rest and applied positions,

- an operating device (35) secured to said pedal arm (8) a distance from said shaft (6) for activation of the vehicular function during movement of said pedal arm (8) between the rest and applied positions, and

- a safety device (3) coupling said shaft (6) to said bracket (2) and *movable* within said bracket (2) between a normal position (FIG. 3A) retaining said shaft (6) in a first location relative to said bracket (2) and a safety position (FIG. 4) displacing said shaft (6) to a second location relative to said bracket (2) different from said first location with said pedal arm (8) remaining pivotally supported about said shaft (6) for maintaining movement of said pedal arm (8) between the rest and applied positions and for at least partially maintaining functionality of said operating device (35) when said safety device (3) is in said safety position. *Id.* Claims 1-16.

Regarding Claim 15, said safety (3) device includes fulcrums (20, FIG. 1) movably disposed about a second horizontal axis (4).

Regarding Claim 16, said fulcrums (20) are mounted between said bracket (2) and said shaft (6) with said fulcrums (20) supporting said shaft (6) within said bracket (2).

Regarding Claim 17, said fulcrums (20) are capable of pivoting relative to said bracket (2) to said safety position about said second horizontal axis (4).

Regarding Claim 18, said second horizontal axis (4) is disposed at said bracket (2) and is substantially parallel with said shaft (6).

Regarding Claim 19, said shaft (6) pivots relative to said fulcrums (20) when said fulcrums (20) pivot relative to said bracket (2). In addition, it is well settled that the “wherein” or “whereby” clause that merely states the inherent results of limitations in the claim adds nothing to the claim’s patentability or substance. *Texas Instruments Inc. v. International Trade Commission*, 26 USPQ2d 1018 (Fed. Cir. 1993); *Griffin v. Bertina*, 62 USPQ2d 1431 (Fed. Cir. 2002); and *Amazon.com Inc. v. Barnesandnoble.com Inc.*, 57 USPQ2d 1747 (Fed. Cir. 2001).

Regarding Claim 20, a locking device (9) is movably mounted to said bracket (2) and selectively engaging said fulcrums (20) for securing said fulcrums (20) in said normal position and for permitting said fulcrums (20) to move into said safety position. *Id.* paragraph [0016]+.

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.



15. Claim 22, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuma (US 2003/0019319 A1) in view of Mueller et al. (US 2002/0007693 A1).

Mizuma teaches the invention as claimed except the sensor.

Mueller teaches the well known sensor for triggering the locking device 11 to move relative to the bracket 5. Mueller, paragraph [0054].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to couple the sensor to Mizuma's locking device for triggering Mizuma's locking device to move relative to Mizuma's bracket as taught or suggested by Mueller. The modification of Mizuma's pedal assembly by coupling the sensor to the locking device would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement." *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

16. Claim 21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

17. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Nawata (FIGS. 1-76), Endo et al. (slot 70), and Tiemann et al. (locking device 3).

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/  
Primary Examiner, Art Unit 3682